

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

MAXIE MCNABB,

Plaintiff

V.

SANDERS LEAD COMPANY, INC.

Defendant.

$$\begin{array}{c}) \\) \\) \\) \\) \\) \\) \\) \end{array}$$

**CIVIL ACTION NO:
2:06-0664-MHT**

PLAINTIFF'S EVIDENTIARY SUBMISSION

Comes Now, the Plaintiff, Maxie McNabb, by and through his undersigned counsel of record and submits the following evidence in support of Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgment. The Plaintiff would show unto the Court as follows:

1. Plaintiff's Exhibit 1-McNabb Declaration
2. Plaintiff's Exhibit 2-Business Report
3. Plaintiff's Exhibit 3-Casting/Alloy Job Description
4. Plaintiff's Exhibit 4-Physical Exam Reports
5. Plaintiff's Exhibit 5-Annual Performance Reviews 2005
6. Plaintiff's Exhibit 6-Letters Regarding Reduction in Force
7. Plaintiff's Exhibit 7-Notice of Claim and Request for Separation Information
8. Plaintiff's Exhibit 8-EEOC Statement of Position

9. Plaintiff's Exhibit 9-Change of Employee Status Form
10. Plaintiff's Exhibit 10-March 7, 2006 Job Advertisement
11. Plaintiff's Exhibit 11-Employment Eligibility Verification Form
12. Plaintiff's Exhibit 12-Job Advertisements
13. Plaintiff's Exhibit 13-Employee Roster
14. Plaintiff's Exhibit 14-March 31, 2006 EEOC Charge
15. Plaintiff's Exhibit 15-Notice of Charge of Discrimination
16. Plaintiff's Exhibit 16-Affidavit of Maxie McNabb
17. Plaintiff's Exhibit 17-July 13, 2006 EEOC Charge
18. Plaintiff's Exhibit 18-Plaintiff's First Interrogatories
19. Plaintiff's Exhibit 19-Defendant's Responses to Plaintiff's First Interrogatories
20. Plaintiff's Exhibit 20-Job Applications

Respectfully submitted,

/s/Roderick T. Cooks
Attorney for the Plaintiff

OF COUNSEL:

WINSTON COOKS, LLC

The Penick Building

319-17th Street North

Birmingham, AL 35203

Tel: (205)502-0970

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document on all persons listed below by CMF/Electronic Mail and/or U. S. Mail, postage prepaid and addressed to them as follows:

Matthew M. Baker, Esq.
Cervera, Ralph & Reeves, LLC
P.O. Box 325
914 South Brundidge Street
Troy, Alabama 36081
(334) 566-0116

Done this the 2nd day of July, 2007.

s/Roderick T. Cooks
Of Counsel

Ex. 1

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FOR THE MIDDLE DISTRICT OF ALABAMA
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DECLARATION OF MAXIE MCNABB

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct:

1. My name is Maxie McNabb. I am an African-American citizen of the United States and a resident of the State of Alabama. I was born on August 30, 1951 in Troy, Alabama and am over the age of nineteen (19), and make this declaration based on facts personally known to me. I have filed a lawsuit against the defendant because I was discriminated against on the basis of my age and I was retaliated against for reporting and opposing age discrimination.

2. Sanders Lead Company, Incorporated (hereinafter "Sanders Lead") is a lead acid battery recycle operation and large scale secondary lead smelting operation located in Troy, Alabama. It employs approximately four hundred employees. The

following people manage the day to day operations of the company: Bart Sanders, VP, Operations; Edgar Fannin, Department Manager Casting and Alloy Department; and Sam Kitchens, Personnel Manager. My direct supervisor was Leon Bennett.

3. I began my employment with Sanders Lead in September 1992 in the Casting/Alloy Department as a Casting/Alloy Operator. A Casting/Alloy Operator prepares and delivers molten lead or lead alloy to a prepared mold to form a solid ingot possessing specific properties. The Casting/Alloy Operator reports to the casting area supervisor.

4. In October 1992, I resigned my employment for a short period to enter a program for help with drug and alcohol dependency. After successfully completing this program, I reapplied with Sanders Lead and was rehired into the same position in November 1992. I had no further issues in this area that affected my employment. After returning to Sanders Lead in November 1992, I worked, with the exception of about one year, as a Casting/Alloy Operator for the next fourteen years.

5. Some time in October or November of 2005, Sanders Lead announced that it was anticipating having to go through a company reorganization and work force reduction. At that time no one discussed with me the prospect of me being included in any reduction in force or lay off, nor did any one notify me that my production had fallen off. Moreover, I received a raise in September 2005 and I also

received satisfactory performance evaluations for the year 2005. These evaluations were signed off on by Leon Bennet and Edgar Fannin.

6. On January 5, 2006, I was informed by Mr. Fanin that I was being laid off due to a reduction in force and a desire by Sanders Lead to reduce expenses. These were the only reasons I was ever given for being laid off and at no time was I notified that I was being laid-off because of absenteeism, tardiness, low production or discipline problems. Upon being informed that I was being laid off, I expressed to Mr. Fannin my desire to keep working, however, he stated that I should go ahead and accept it. I never told Mr. Fannin that the work had become too difficult for me. Three other employees were also laid-off at this time but they lacked my experience and length of service in the Casting/Alloy Department.

7. After being laid off, I applied for unemployment compensation which I received. From documents I have reviewed as part of discovery in this case, Sanders Lead reiterated to the State of Alabama what it had stated to me as the reason for my separation, which was that the company was going through a reorganization and reduction in force.

8. On or about March 7, 2006, Sanders Lead placed a help wanted advertisement in a local Troy newspaper, the Troy Messenger. This advertisement stated the following: "Sanders Lead Co. Is taking applications for all shifts in the

Furnace Dept. and Casting & Alloy Dept. Applicants must be able to lift 75-100 lbs & climb some heights. BC/BC insurance & 401-k. Starting pay \$8. Apply at Sanders Lead Co. Personnel Dept. 334-566-1563.” I had experience in the Furnace Department and I had worked the majority of my career in the Casting/Alloy Department.

9. Upon reading this advertisement, I immediately called Edgar Fannin and requested my old job back as a Casting/Alloy Operator. During this call I also informed Mr. Fannin that I had seen Sanders Lead’s advertisement regarding openings in my old department. Mr. Fannin’s reply to me was that the advertisement was not accurate and that Sanders Lead was not hiring. Near the end of our conversation, I again reiterated my desire to return to my old position. It had been past practice that if Mr. Fannin knew you wanted to work he would hire you on the spot and then have you fill out a formal application later. Another reason I called Mr. Fannin is that I had spoken with an employee that had been laid-off with me, Ed Meadows, who informed me that he had recently been rehired. Mr. Meadows was born on November 26, 1981 and was at the time approximately twenty-five years old.

10. Sanders Lead continued to advertise for workers to fill positions in its Casting/Alloy Department all through the month of March 2006. I know this because I saw the advertisements in subsequent issues of the Troy Messenger. However, I

was never contacted by Mr. Fannin or any other Sanders Lead official after I had made known my interest in re-employment.

11. On March 31, 2006, I filed a charge of discrimination with the Equal Employment Opportunity Commission (EEOC) alleging that I had been discriminated against on the basis of my age in violation of the Age Discrimination in Employment Act. On or about April 5, 2006, a Notice of Charge of Discrimination was mailed to Bart Sanders giving Sanders Lead until May 5, 2006 to provide a statement of position regarding my allegations of age discrimination. Sanders Lead provided a statement of position on or about May 4, 2006.

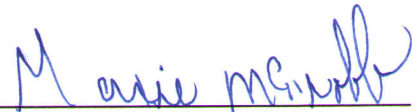
12. In its statement of position, Sanders Lead claimed that I was laid off in January 2006 as part of a company wide reduction in force which was done to reduce Company expenses. Nowhere in this statement of position did Sanders Lead claim that I was being let go for any other reason other than "a company wide reduction in force which was done to reduce Company expenses."

13. On May 24, 2006, Joe Owens and I visited Sanders Lead to pick up job applications as we had heard that Sanders Lead was continuing to hire employees for the Casting/Alloy Department. Mr. Owens and I met with Anne Baker, a secretary, who gave us both applications. Ms. Baker instructed us to fill out these applications and return them after lunch on the same day.

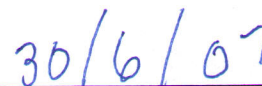
14. Mr. Owens and I returned this same day to submit our applications as instructed by Ms. Baker. Upon our arrival, I went to the training building to speak with Personnel Manager Sam Kitchens. Mr. Kitchens informed me that there were openings in the Casting/Alloy Department and that he would get back to me within a couple of days regarding my application. After this meeting, I never heard from Mr. Kitchens.

15. Sanders Lead continued to hire younger less qualified employees into the Casting/Alloy Department. From reviewing documents in this case, I have also learned that there were other positions for which I was qualified but never considered such as Welder/Maintenance Man.

The above and foregoing is true and correct to the best of my knowledge.



Maxie McNabb



Date

Ex. 2

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Sanders Lead Company, Inc. Company Profile

Old car batteries are just something to trip over for most people, but they look like money to Sanders Lead. The company recycles lead-acid batteries and smelts and refines the lead -- in other words, it gets the lead out. Members of the Sanders family, including company president Wiley Sanders, are major investors in Sanders Lead. Wiley Sanders also owns a stake in KW Plastics, which recycles polypropylene and polyethylene products.

Contact Information

Address: 1 Sanders Rd.
Troy, AL 36079
Phone: 334-566-1563
Fax: 334-660-0107

Financial Highlights

Fiscal Year End: May
Revenue (2005): 111.10 M
Employees (2005): 400

Key People

- President: Wiley C. Sanders Jr.
- CFO and Controller: Wayne Turberville
- VP, Operations: Bart Sanders

Industry Information

Sector: [Basic Materials](#)
Industry: [Industrial Metals & Minerals](#)

Top Competitors

- [The Doe Run Company](#)

- [Diversified Investments](#)
- [Drug Manufacturers - Major](#)
- [Electric Utilities](#)
- [Food - Major Diversified](#)
- [Industrial Metals & Minerals](#)
- [Major Airlines](#)
- [Major Integrated Oil & Gas](#)
- [Money Center Banks](#)
- [Property & Casualty Insurance](#)
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- [Metaleurop S.A.](#)
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[Questions or Comments?](#)

Ex. 3

SLC-JD-11-2001

Company Division
Sanders Lead

Department
Casting/Alloy

Last Revision Supervisor Name
12/12/01 John Murdoh

Last Name
McNabe *McNabe*

First Name
Maxie

Middle Name

Company Functional Job Title
Casting/Alloy Operator

General Job Description

The casting/alloy operator prepares and delivers molten lead or lead alloy to a prepared mold to form a solid ingot possessing specific properties. The casting/alloy operator reports to the casting area supervisor.

General Duties

The casting/alloy operator assists technicians in assuring the homogenous nature of the lead/lead alloy to be cast. The casting/alloy operator is responsible for insuring the availability of space for the delivery of processed materials from the blast furnaces.

Specific Responsibilities

The casting/alloy operator removes and collects impurities from the molten lead in the form of slag. The casting/alloy operator introduces any chemical additives necessary to process the raw lead to a state of acceptable purity or customized alloy. This material is then pumped into a casting mold to form a solid ingot of product.

Basic Required Qualifications

A High School diploma or GED is the minimal Education level. In the absence of either a diploma or GED one year as a casting/alloy general laborer or similar employment will be accepted as a substitute for one year of formal education. Two years of previous verifiable experience as a casting operator in a similar environment will supersede the formal education requirements. The casting/alloy operator should have 2 years experience as a casting operator or acceptable similar foundry

Required Personal Protective Equipment

Eye Protection, Hearing protection, Respirator for particulates and acid gases, appropriate steel toed safety footwear.

Required Training

Hazardous Waste Operations and Emergency Response, Specific Hazards of the work area, Proper use of Personal Protective Equipment, Emergency contingency plan, forklift operator training

Required Testing

Respirator fit test, Pulmonary function baseline, Hearing Baseline, Annual Pulmonary function, Annual Hearing conservation, Blood lead tests

Tuesday, February 05, 2002

Page 164 of 276